U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 04 2006

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mai Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we find that the record, including the new letters submitted on appeal, adequately demonstrates the petitioner's influence beyond his colleagues such that a waiver of the job offer requirement can be considered in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. from the University of Madras. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, biological research, and that the proposed benefits of his work, improved understanding of messenger RNA (mRNA) turnover mechanisms, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof.

A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

After obtaining his Ph.D., the petitioner began working in the laboratory of [redacted] at the University of New Hampshire (UNH) in 2000 where he studied mRNA in eukaryotic cells. In 2004, he was recruited to join the laboratory of [redacted] at Colorado State University, where he studies mRNA in mammalian cells.

[redacted] asserts that at UNH, the petitioner rose to the level of project leader and published peer-reviewed articles that have had a major impact on the field concerning how mRNA levels are regulated. [redacted] explains the significance of this area of research on appeal as follows:

> Since protein expression in cells is controlled by both the amount of mRNA that is synthesized and how rapidly it is degraded, that is, turned over, information about the mechanisms used in mRNA turnover may lead to improved methodologies for controlling the abundance and timing of protein synthesis. As most disease states involve aberrant protein expression, one obvious remedy to such situations is to alter processes involved in controlling how long mRNA exist in the cell.

While at UNH, the petitioner optimized the deadenylation process for and characterized the kinetics of the enzyme CCR4. According to [redacted] the petitioner's "results indicated RNA sequence determinants were likely to be key features that controlled CCR4 activity." In a second paper, the petitioner reported his results with mouse CAF1, an associated protein of CCR4, demonstrating that CAF1, like CCR4, is a deadenylase involved in mRNA decay. [redacted] asserts that the results of this work demonstrate "that the CCR4-NOT protein complex will be vital for human cells." The petitioner also demonstrated, however, that CAF1 in yeast does not function as a deadenylase as it does in mammal cells, although it does play a critical role in deadenylation. Finally, the petitioner demonstrated that mutations in the leucine-rich repeat (LRR) motif completely inhibit CCR4 enzymatic activity.

While [redacted] does not explain the implications of the above work, [redacted] an assistant professor at UNH, explains that mRNA degradation and turnover mechanisms have a great impact on gene regulation and expression. Thus, improved understanding of mRNA degradation "will help to provide pharmacologists with novel targets for drugs designed to cure diseases that afflict millions of Americans."

[redacted] provides similar information, asserting that the petitioner was the first to generate evidence that a certain region of the mRNA molecule could directly impact a deadenylase enzyme, "making it truly a key observation in the field." [redacted] attests to the broad impact this work has had on the field, asserting that the petitioner has been "cited by various authors and review articles."

In support of [redacted] claim regarding the petitioner's citation record, the petitioner submitted evidence that one of the petitioner's articles had been cited four times, twice by independent research

groups. The petitioner also submitted four review articles that cite his work. In response to the director's request for additional evidence, the petitioner submitted evidence that his 2001 article with several coauthors was cited 26 times and evidence that two of his first-author articles had been moderately cited.

Also in response to the director's request for additional evidence, the petitioner submitted new letters from independent researchers in the field. All of the letters assert that the petitioner has advanced our understanding of the mRNA degradation process. [redacted] a professor at Harvard Medical School, asserts that the petitioner's work "is pivotal for the advancement of projects like mine that rely [on] a more in-depth understanding of how cells function in order to forward projects dealing with specific human diseases."

On appeal, the petitioner submits even more letters that go beyond mere praise and general assertions of skill and influence. [redacted] a professor at the University of Texas, asserts that the petitioner's work "was vital to our findings" and has "clearly influenced, in a very crucial way, the direction of research in my laboratory and in the field in general." [redacted] an assistant professor at the University of Colorado, asserts that the petitioner's research "has set a great foundation for not only us, but also several other scientific groups in the US."

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the biological research community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.